

CONFLICT RESOLUTION AGREEMENT

for

TELEVISION STATIONS KESD-DT, BROOKINGS, SOUTH DAKOTA

and

KABY-DT, ABERDEEN, SOUTH DAKOTA

by and between

**SOUTH DAKOTA BOARD OF TRUSTEES FOR
EDUCATIONAL TELECOMMUNICATIONS**

and

SOUTH DAKOTA TELEVISION LICENSE SUB, L.L.C.

AUGUST 5, 2005

**FCC FILE NOS. BFCCT-20050803ABS, BFCET-20050812AAZ,
BFCET-20050812ABA
MB DOCKET NO. 03-15**



555 N. Dakota Street • P.O. Box 5000 • Vermillion, SD 57069-5000
(605) 677-5861 or (800) 456-0766 FAX (605) 677-5010
www.sdpb.org

CONFLICT RESOLUTION AGREEMENT

5th **THIS CONFLICT RESOLUTION AGREEMENT** ("Agreement") is entered into this day of August 2005, by and between South Dakota Board of Trustees for Educational Telecommunications ("SDBD") and South Dakota Television License Sub, L.L.C. ("TLS") (individually a "Party", and collectively, the "Parties").

WITNESSETH:

WHEREAS, SDBD is the licensee of Station KESD-DT, Brookings, South Dakota, and TLS is the licensee of Station KABY-DT, Aberdeen, South Dakota; and

WHEREAS, SDBD and TLS have filed first round DTV channel elections, pursuant to the procedures established by the Federal Communications Commission ("FCC"), and the FCC has issued a Letter dated June 7, 2005 (the "Letter"), which concludes that TLS's proposal to conduct DTV operations on NTSC Channel 9 would result in 0.7% impermissible interference to SDBD's proposal to conduct DTV operations on NTSC Channel 8 and that SDBD's proposal would result in 0.3% impermissible interference to TLS's proposal; and

WHEREAS, the Letter states that a licensee with an interference conflict may negotiate a conflict resolution agreement with a station with which it is in conflict, and a station receiving interference may agree to accept interference as long as it is still able to serve all of its community of license; and

WHEREAS, the Parties believe that a settlement upon the terms set forth in this Agreement will serve the public interest in that it will resolve the impermissible interference determined by the FCC, and thereby speed the provision of DTV service;

NOW THEREFORE, in consideration of the mutual covenants, agreements, conditions, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties to this Agreement hereby agree as follows:

1. Acceptance of Interference. SDBD hereby agrees to accept the interference caused to its DTV operations by TLS, as described by the FCC in the Letter, and TLS hereby agrees to accept the interference caused to its DTV operations by SDBD, as described by the FCC in the Letter.

2. No Consideration. Because the Parties are agreeing to mutual acceptance of interference, no money or other valuable consideration is being paid or received by either Party in connection with this Agreement.

3. Request for FCC Consent. Within five (5) business days after the execution of this Agreement, the Parties shall file a Joint Request for Approval of Conflict Resolution Agreement (the "Joint Request") requesting the FCC to issue an order or orders: (i) granting the Joint Request; and (ii) approving this Agreement. The Parties shall in good faith pursue approval by the FCC of this Joint Request and shall cooperate fully with each other and with the FCC and take whatever additional action is necessary or appropriate to obtain FCC approval of, and to effectuate, this Agreement. Neither Party shall take any action adverse to this Agreement or the Joint Request.

4. Final Action. The obligations of the Parties under this Agreement are expressly conditioned upon the FCC taking "Final Action" approving this Agreement in its entirety. For purposes of this Agreement, "Final Action" shall occur when the time for filing any requests for administrative or judicial review of such action, or for the FCC to reconsider such action on its own motion, has lapsed without any such filing or motion having been filed or, in the event of any such filing or motion, it shall have been disposed of in a manner so as not to affect the validity of the action taken and the time for seeking further administrative or judicial review with respect to the action shall have expired without any request for such further review having been filed.

5. Authorization and Binding Obligation. The Parties hereto represent to one another that they each have the power and authority to enter into and carry out this Agreement and that this Agreement constitutes a valid and binding obligation of each of them in accordance with its terms.

6. Notices. All notices, requests, demands and other communications relating to this Agreement shall be in writing and shall be sent by first class, certified or registered mail, return receipt requested, postage prepaid and, pending the designation of another address, addressed as follows:

If to SDBD:

South Dakota Board of Directors for Educational Telecommunications
Box 5000
Vermillion, SD 57069-5000

With a copy (which shall not constitute notice) to:

Cohn and Marks LLP
Attn: Jerold L. Jacobs, Esq.
1920 N Street, N.W.
Suite 300
Washington, D.C. 20036-1622

If to TLS:

South Dakota Television License Sub, L.L.C.
405 Park Avenue
Suite 702
New York, NY 10022-4405

With a copy (which shall not constitute notice) to:

7. Entire Agreement. Except as otherwise set forth herein, this Agreement constitutes the entire understanding of the Parties, and no other consideration, action or forbearance is contemplated or relied upon by them. This Agreement may not be amended or modified except by a writing signed by both Parties.

8. Enforcement. Should the Parties engage in litigation arising out of this Agreement, the prevailing party in such litigation shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court. The Parties recognize that this Agreement confers a unique benefit, the loss of which cannot be compensated for through monetary damages. Thus, in the event of a breach of this Agreement, the Parties acknowledge that specific performance or other equitable relief would be an appropriate remedy, and agree to waive any defense that there is an adequate remedy at law for breach of this Agreement.

9. Assignment and Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and their heirs, successors, executors, legal representatives and assigns, provided however that neither Party may voluntarily assign this Agreement without the express written consent of the other Party.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota without application of conflicts of laws principles. The Parties agree that any action arising out of a dispute under this Agreement must be brought in the state or Federal courts of South Dakota, and the parties hereby accept the jurisdiction of those courts for the resolution of any disputes under this Agreement.

11. Headings. The headings herein are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

12. Counterparts. This Agreement may be executed in one or more counterparts and shall be binding when it has been executed by each of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement or have caused this Agreement to be executed on their behalf to be effective as of the date first set forth above.

**SOUTH DAKOTA BOARD OF DIRECTORS FOR
EDUCATIONAL TELECOMMUNICATIONS**

By: _____


Julie Andersen, Executive Director

**SOUTH DAKOTA TELEVISION LICENSE
SUB, L.L.C.**


